

CAUSE NO. 7826

EDWIN PAUL ROBERTS and	§	IN THE 394th DISTRICT COURT
CAROL ROBERTS,	§	
<i>Plaintiffs,</i>	§	
	§	
	§	
v.	§	
	§	OF
	§	
MICHAEL BRYANT,	§	
WALKER DAUGHERTY,	§	
BOB DAUGHERTY d/b/a	§	
BIG RIM OUTFITTERS f/k/a	§	
REDWING OUTFITTERS, and	§	
CIRCLE DUG RANCH PARTNERSHIP,	§	
<i>Defendants.</i>	§	PRESIDIO COUNTY, TEXAS

PLAINTIFFS' FIRST AMENDED PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs, EDWIN PAUL ROBERTS and CAROL ROBERTS, complaining of Defendants, MICHAEL BRYANT, WALKER DAUGHERTY, BOB DAUGHERTY d/b/a BIG RIM OUTFITTERS f/k/a REDWING OUTFITTERS, And CIRCLE DUG RANCH PARTNERSHIP, and would respectfully show the Court as follows:

I. DISCOVERY

1.01 Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiffs intend to conduct discovery in this case under level 3 (Rule 190.4 Texas Rules of Civil Procedure).

II. PARTIES

2.01 Plaintiff Edwin Paul Roberts is an individual and resident of the State of Florida. Pursuant to TEX. CIV. PRAC. REM. CODE § 30.014, the last three digits of his social security number are 997.

2.02 Plaintiff Carol Roberts is the wife of Edwin Paul Roberts and a resident of the State of Florida. The last three digits of her social security number are 100.

2.03 Defendant Michael Bryant (Defendant Bryant) is an individual and resident of the State of New Mexico, and an employee of Big Rim Outfitters f/k/a Redwing Outfitters. Defendant Bryant has previously entered an appearance and may be served through his counsel of record.

2.04 Upon information and belief, at all times material hereto, Defendant Walker Daugherty (Defendant Daugherty) is an individual and resident of the State of New Mexico, and an employee of Big Rim Outfitters f/k/a Redwing Outfitters. Defendant Daugherty has previously entered an appearance and may be served through his counsel of record.

2.05 Upon information and belief, at all times material hereto, Defendant Bob Daugherty d/b/a Big Rim Outfitters f/k/a Redwing Outfitters (Defendant Redwing Outfitters) is an individual and resident of the State of New Mexico. Defendant Redwing Outfitters has previously entered an appearance and may be served through his counsel of record.

2.06 Upon information and belief, at all times material hereto, Defendant Circle Dug Ranch Partnership (Circle Dug Ranch) is a Partnership with its principal place of business in the State of Texas. Defendant Circle Dug Ranch Partnership has previously entered an appearance and may be served through its counsel of record.

III. VENUE AND JURISDICTION

3.01 Venue is proper in Presidio County, Texas, pursuant to TEX. CIV. PRAC. REM. CODE § 15.002(a)(1) because it is the county in which all or a substantial part of the events/omissions giving rise to the cause of action occurred.

3.02 The amount of the Plaintiffs' damages is substantial and well in excess of the jurisdictional minimums of this Court. Many elements of damage, including pain, suffering, mental anguish in

the past and future, and past and future physical impairment, cannot be determined with mathematical precision. Furthermore, the determination of many of these elements of damage is peculiarly within the province of the jury. Plaintiffs do not at this time seek any certain amount of damages for any of these particular elements of damage but would instead rely upon the collective wisdom of the jury to determine an amount that would fairly and reasonably compensate Plaintiffs. Additionally, the medical prognosis and extent of recovery is not currently known. However, in order to comply with the pleading requirements of TEX. R. CIV. P. 47(C)(5), Plaintiffs plead that they seek monetary relief over \$1,000,000. Plaintiffs also seek judgment for all other relief to which Plaintiffs are entitled. Plaintiffs reserve the right to file an amended pleading on this issue should subsequent evidence show this figure to be either too high or too low.

IV. FACTS

4.01 Defendant Redwing Outfitters operates an outfitting business offering hunts across Texas and New Mexico. Defendants Walker Daugherty and Bryant are employees of Defendant Redwing Outfitters. Some of the guided hunts offered by Defendant Redwing Outfitters take place at Circle Dug Ranch, owned by Circle Dug Ranch Partnership, in Presidio County, Texas.

4.02 Plaintiff Edwin Roberts and his wife, Carol Roberts, contracted with Defendant Redwing Outfitters for a guided hunt at Circle Dug Ranch. On or about January 6, 2017, while at Circle Dug Ranch, Defendants Bryant and Walker Daugherty warned Edwin about recent burglaries in the area by border crossers. They recommended that Edwin sleep armed. Plaintiffs Edwin and Carol Roberts then retired for the night to a motorhome they had rented for the occasion. The motorhome was parked several yards away from the camp house.

4.03 Shortly after falling asleep, Plaintiffs awoke to the sound of someone rattling the latch to the motorhome door. Their immediate reaction was that someone was trying to break in. Edwin

warned the person outside the motorhome that he was armed and would shoot. The individual attempting to break in responded in English that he was going to take the motorhome. Even after Edwin shouted three more warnings, the individual outside the motorhome continued his effort to get inside. Edwin fired a warning shot through the door but did not hit anybody. He then moved to the driver's seat of the motorhome in an attempt to drive it close to the camp house for protection. As Edwin was trying to move the motorhome, he was shot twice through the motorhome's windows by Defendants Bryant and Daugherty. Defendants Daugherty and Bryant shot Edwin Roberts under the assumption that the rented motorhome being occupied by the Plaintiffs was being hijacked by an intruder. The curtains on the motorhome's windows were pulled shut such that Defendants Bryant and Daugherty could not have known who they were shooting at.

4.04 At some point during the gunfire, Defendant Daugherty was shot in the chest. Defendants Bryant and Daugherty claimed that an intruder shot Defendant Daugherty. A subsequent investigation by law enforcement revealed that there was no objective evidence of an intruder. All of the shell casings recovered were from the firearms shot by Defendant Daugherty and Bryant, and the one warning shot by Edwin Roberts.

4.05 In the event that there was an intruder, Defendant Circle Dug Ranch Partnership was aware of the recent burglaries in the area. Circle Dug Ranch Partnership failed to make the premises safe for Plaintiffs Edwin and Carol Roberts, who were invitees.

4.06 Plaintiffs Edwin and Carol Roberts fully trusted Defendant Redwing Outfitters to provide a safe and fun hunt. Instead, Plaintiff Edwin Roberts was shot as a result of Defendant Bryant and Daugherty's disregard for his safety. Defendants' negligence proximately caused Plaintiffs' injuries.

V. CAUSES OF ACTION

Defendants Walker Daugherty and Bryant – Negligence

5.01 Defendants Walker Daugherty and Bryant's negligence was the proximate cause of Plaintiffs' injuries and said Defendants were negligent in many respects including, but not limited to, the following:

- a. Discharging a firearm without identifying their target;
- b. Failing to determine who was in the motorhome before shooting;
- c. Shooting at a motorhome with its curtains shut in;
- d. Failing to contribute to a safe environment for their paying clients;
- e. Failing to use a firearm safely; and
- f. Needlessly endangering Plaintiffs.

Defendant Redwing Outfitters – Negligent Entrustment, Hiring, Training, Supervision, and Retention

5.02 The conduct of Defendant Redwing Outfitters constitutes negligence in many respects including but not limited to the following:

- a. Defendant Redwing Outfitters failed to safely entrust its firearms to competent employees;
- b. Defendant Redwing Outfitters failed to hire, supervise, and train competent employees;
- c. Defendant Redwing Outfitters failed to retain competent employees; and
- d. Defendant Redwing Outfitters failed to fire incompetent or dangerous employees.

5.03 Each foregoing breach, singularly or in combination with other acts or omissions proximately caused Plaintiffs' injuries and damages.

Respondeat Superior of Defendant Redwing Outfitters

5.04 Vicarious liability for Plaintiffs' injuries and damages attaches to Defendant Redwing

Outfitters through *respondeat superior* in the following respects:

- a. Defendants Daugherty and Bryant were employees of Defendant Redwing Outfitters at the time of the incident;
- b. Defendants Daugherty and Bryant were working in the course and scope of their employment at the time of the incident;
- c. Defendants Daugherty and Bryant were acting in furtherance of Defendant Redwing Outfitters' business at the time of the incident; and
- d. Defendants Daugherty and Bryant were working for the accomplishment of the object for which they were hired.

5.05 Defendants Daugherty and Bryant's negligence is a proximate cause of Plaintiffs' injuries and damages.

Defendant Circle Dug Ranch Partnership – Premises Liability Negligence

5.06 Defendant Circle Dug Ranch Partnership is guilty of premises liability negligence due to the following:

- a. Plaintiffs Edwin and Carol Roberts paid money to be able to hunt at the Circle Dug Ranch thus they were invitees;
- b. Defendant Circle Dug Ranch Partnership is the possessor of Circle Dug Ranch;
- c. The recent burglaries in the area posed an unreasonable and foreseeable risk of harm;
- d. Defendant Circle Dug Ranch Partnership knew or had reason to know of the recent burglaries in the area;
- e. It was foreseeable that Plaintiffs, or someone similarly situated, would be victims of an attempted burglary;
- f. Defendant Circle Dug Ranch Partnership breached its duty of ordinary care by failing to protect the Plaintiffs from foreseeable criminal activity of third parties; and
- g. Defendant Circle Dug Ranch Partnership's breach proximately caused the Plaintiffs' injuries.

5.07 Each of the foregoing acts or omissions of Defendant Circle Dug Ranch Partnership, singularly or in combination with others, constituted negligence which was a proximate cause of the above-referenced occurrence and damages.

VI. DAMAGES

Plaintiff Edwin Roberts

6.01 As a direct and proximate result of Defendants' negligence, Edwin Roberts suffered damages and personal injuries and, as provided by Texas law, is entitled to recover for those damages. Edwin Roberts suffered damages as follows:

- a. Physical pain sustained in the past;
- b. Physical pain that, in reasonable probability, Edwin Roberts will sustain in the future;
- c. Mental anguish sustained in the past;
- d. Mental anguish that, in reasonable probability, Edwin Roberts will sustain in the future;
- e. Physical impairment sustained in the past;
- f. Physical impairment that, in reasonable probability, Edwin Roberts will sustain in the future;
- g. Disfigurement sustained in the past; and
- h. Disfigurement that, in reasonable probability, Edwin Roberts will sustain in the future.

Plaintiff Carol Roberts

Bystander Claim

6.02 Carol Roberts suffered severe mental anguish and emotional distress as a result of this incident. Defendants negligently inflicted serious injuries to her husband, Edwin Roberts. Carol was in the motorhome when Edwin was shot and suffered shock as a result of the direct emotional

impact from a sensory and contemporaneous observance of Edwin bleeding profusely from the gunshot wounds he sustained.

Loss of Consortium

6.03 Carol Roberts suffered a severe loss associated with the injuries sustained by her husband Edwin Roberts, and the resulting impairment of the husband-wife relationship. As a direct and proximate result of Defendants' conduct, Carol Roberts has suffered damages as follows:

- a. Loss of companionship and society sustained in the past and which will reasonably be sustained in the future;
- b. Loss of consortium sustained in the past and which will reasonably be sustained in the future; and
- c. Loss of affection & assistance sustained in the past and which will reasonably be sustained in the future.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that upon final trial by jury, Plaintiffs recover against Defendants the following:

1. Compensatory damages as set forth above;
2. Pre-judgment and post-judgment interest as allowed by law;
3. Costs of court; and
4. Such other, further and different relief to which Plaintiffs may show themselves justly entitled.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

Plaintiffs hereby respectfully demand a trial by jury in this cause and have previously paid the required fee.

/S/ Pedro Leyva
Pedro Leyva

CERTIFICATE OF SERVICE

I certify that on this 6th day of March, 2019, a true and correct copy of the foregoing document was filed electronically with the Clerk of the Court in accordance with Texas Rule of Civil Procedure 21(f)(1), and is served on all counsel of record electronically pursuant to Texas Rule of Civil Procedure 21a(a)(1), or if the email address of the party or attorney is not on file with the electronic filing manager then service is accomplished pursuant to Texas Rule of Civil Procedure 21a(a)(2). The following attorney(s) are served with the foregoing document:

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